one, and accordingly did not have to be renewed street by street or foot by foot as the pipes were laid, so the acceptance of that offer did not have to be made pro tanto as each piece of pipe was laid, but was made for all the streets of the city when the water or gas company entered upon the undertaking of supplying the city, and so had changed its position beyond possibility of impairment.[6]

The position thus taken by the United States Supreme Court is a slight step in advance of that taken in two previous cases[7] in which it had held that the laying of a single track by a railway company was a sufficient acceptance of a grant of a right to lay a double track to prevent the city from later revoking the privilege of laying the additional track. For, while the laying of one track is a partial performance, and thus an acceptance of the right to lay two parallel tracks, the laying of a pipe in "A Street" might not be preparatory or in any sense an incident to the laying of a pipe in "B Street".

Under the theory of the court that the acceptance of an invitation to perform a service within a community is an acceptance as to the entire community, it is possible that those cities which have been unable to induce their water companies to extend their facilities[8] may at last have found a remedy. If this decision does not indirectly work this result, it will at least serve to bring home to us again that, in the field of legislation as well as that of morals, the sins of the fathers are visited upon the children unto the third and fourth generations. R. W. M.

MINING LAW: WITHDRAWAL OF OIL LANDS: EXECUTIVE AUTHORITY.—Whether or not the so-called "Taft" or executive withdrawal of oil lands of the public domain from location under the federal mining laws was a valid exercise of executive authority, has given rise to important litigation.[1] The ownership of oil lands in California and Wyoming valued at many millions of dollars depends upon the determination of this question. It is conceded that the subsequent withdrawal of July 2, 1910, of these same lands made by the President in pursuance of the Act of Congress of June 25, 1910,[2] specifically authorizing such withdrawal, was valid. The validity of the first withdrawal, however,

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[6] Walla Walla v. Walla Walla Water Co. (1898), 172 U. S. 1, 43 L. ed. 341.

[7] City Ry. Co. v. Citizens' St. Ry. Co. (1897), 166 U. S. 557, 41 L. ed. 1114, 17 Sup. Ct. 653; Grand Trunk Western Ry. Co. v. South Bend (1913), 227 U. S. 544, 57 L. ed. 633, 33 Sup. Ct. 303, 44 L. R. A. (N. S.) 405. For a similar case see Workman v. S. P. R. R. Co. (1900), 129 Cal. 536, 62 Pac. 185, 316.

[8] See 1 Cal. Law Rev. 283.

[1] The withdrawal order in question was dated September 27, 1909, and is sometimes referred to as the "Ballinger" withdrawal since Richard Ballinger was at that time Secretary of the Interior and promulgated the order.

[2] 36 Stat. at L. 847.

turns on a question of fundamental importance which involves an analysis of our theory of government and of the respective powers that are vested in the various branches of which it is composed. Can the executive branch of the government, while the general mining laws of Congress are in force, unmodified or unrepealed by any legislative enactment, withdraw from the operation of those laws, large areas of the public domain containing the minerals which those laws contemplate may be located by qualified citizens, and place the withdrawn lands in a state of temporary reservation, even though, in so doing, the executive may be actuated by the idea that the highest public interest demands a change in legislative policy governing the dispostion of those lands? The order of withdrawal states that its purpose is "in aid of proposed legislation affecting the use and disposition of the petroleum deposits on the public domain". There is little question but that the executive in furtherance of the public welfare may place limited areas of the public domain in a state of temporary reservation for specific governmental purposes, such as for military purposes, lighthouse sites in aid of navigation, etc.[3] In most of the cases where this power has been upheld, even, there had been some direct or indirect Congressional sanction for the withdrawal, such as the appropriation of money with which to construct an improvement on the land so withdrawn. This power of withdrawal is not, however, an arbitrary one.[4] The intended effect of the "Taft" withdrawal was a virtual nullification and indefinite suspension of the operation of the mining laws of Congress as to the withdrawn areas which embraced practically all the then known petroleum bearing lands of the public domain. The Land Department has ruled that this withdrawal was valid[5] but Judge Riner, United States District Judge of Wyoming in the case of United States v. Midwest Oil Company[6] held that it was invalid. This latter case is now pending before the Supreme Court of the United States.[7] On June 1, 1914, Judge Dooling, United States District Judge sitting in the Southern District of California, in the case of *United States v. Midway Northern Oil Company*,[8] decided that the "Taft" withdrawal was without lawful authority. He held that the power to dispose of the public lands had been given to Congress by the constitution and neither the executive nor the judicial

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[3] Griscar v. McDowell (1867), 73 U. S. 363; Wilcox v. Jackson (1839), 38 U. S. 498; Wolcott v. Des Moines Co. (1866), 72 U. S. 681; Wolsey v. Chapman (1879), 101 U. S. 755.

[4] Sjoli v. Dreschel (1905), 199 U. S. 564 and cases cited in marginal note to the opinion. See Southern Pacific R. R. Co. v. Bell (1901), 183 U. S. 675; Brandon v. Ard (1908), 211 U. S. 11; Osborn v. Froyseth (1909), 216 U. S. 571.

[5] In re Lowell, 40 Land Decisions 303.

[6] No written opinion was handed down.

[7] A decision is expected before the court adjourns for this term.

[8] (May 29, 1914), The [San Francisco] Recorder, June 5, 1914.

branches of the government had the right to nullify the congressional will as expressed in the mining laws; that "the promulgation of the order in question" was "one manifestation of a growing tendency to concentrate in the executive more power than can be traced to any specific constitutional or legislative provisions" and was "an encroachment upon the domain of Congress".

W. E. C.

MUNICIPAL CORPORATIONS: CONTROL OVER PUBLIC SERVICE COMPANIES IN THEIR USE OF THE STREETS.—It has been settled beyond question that section 19 of article 11 of the constitution, prior to its amendment in 1911,[1] constituted a direct grant from the people of the state to the types of public service companies therein enumerated of the right to use the streets of a city for the purposes authorized;[2] that the privilege, when accepted and used, became an easement in the particular streets,[3] and that under familiar principles of constitutional law, the contract formed by the acceptance of the grant cannot be impaired either by the municipality or state.[4]

But the constitutional provision above referred to did not vest the grantees with an absolute right to excavate the streets of a city. In the case of *Ex parte Keppelmann*,[5] the Supreme Court was called upon to pass on the validity of an ordinance of San Francisco regulating the excavation of streets. The ordinance provided for indemnity for damages from excavations, the registration of plans of intended excavations with the Board of Public Works, and the issuance of a certificate by them upon the approval of the plans by the city engineer. The ordinance also made it a misdemeanor to excavate in the streets without such certificate as evidence of the right to do so. The majority of the court sustained the validity of the ordinance, but a dissent was based upon the inconsistency of the majority opinion with the prior case of In re Johnson.[6]

It is believed that the principal case and In re Johnson are not in conflict. In the latter case, the ordinance, as construed by the court, attempted to vest a discretion in a city official to grant or refuse the right to enter the city. As this right was directly granted by the constitution it is clear that the right itself could not be made to depend upon the will of a city officer. There can be no doubt that a city official cannot be vested with a discretion, the exercise of which may prevent the beneficial user of a franchise.[7] As standing for such

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[1] Stats. 1911, p. 2180.
[2] People v. Stevens (1882), 62 Cal. 209.
[3] Stockton G. and E. Co. v. San Joaquin Co. (1905), 148 Cal. 313, 83 Pac. 54.
[4] New Orleans Gas Co. v. Louisiana Light Co. (1885), 115 U. S. 650.
[5] (Jan. 8, 1914), 47 Cal. Dec. 65, 138 Pac. 346. Rehearing denied Feb. 4, 1914.
[6] (1902), 137 Cal. 115, 69 Pac. 975.
[7] Madison v. Morristown Co. (1902), 63 N. J. Eq. 120, 52 Atl. 158.